

AMENDED IN SENATE MAY 14, 2009

SENATE BILL

No. 677

Introduced by Senator Yee

February 27, 2009

An act to amend Section 3352 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 677, as amended, Yee. Workers' compensation: exclusions: farming operations.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, ~~or~~ *and* in the course of, employment. Existing law requires employers to secure this payment either by being insured by one or more insurers duly authorized to write compensation insurance in this state or by securing from the Director of Industrial Relations a certificate of consent to self-insure. Existing law excludes various persons from the definition of employee for purposes of these provisions.

This bill would exclude any person employed by his or her parent, child, spouse, or registered domestic partner, or by the spouse or registered domestic partner of his or her parent or child, in a farming operation that is registered with the director or the director's designee and meets certain specified conditions. The bill would require the owner or owners of the farming operation to submit specified information when registering with the director or the director's designee. The bill would provide that this information shall become public record, except as specified. The bill would provide that registration shall be in effect for one year, except as specified.

This bill would provide that if any of the conditions of registration are violated, the farming operation shall be deemed to have failed to secure the payment of compensation and shall be subject to the resulting penalties. The bill would also provide that a violation of the conditions shall constitute good cause for the director or the director's designee to cancel the farming operation's registration.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3352 of the Labor Code is amended to
2 read:
- 3 3352. "Employee" excludes the following:
- 4 (a) Any person defined in subdivision (d) of Section 3351 who
5 is employed by his or her parent, spouse, or child.
- 6 (b) Any person performing services in return for aid or
7 sustenance only, received from any religious, charitable, or relief
8 organization.
- 9 (c) Any person holding an appointment as deputy clerk or deputy
10 sheriff appointed for his or her own convenience, and who receives
11 no compensation from the county or municipal corporation or from
12 the citizens thereof for his or her services as the deputy. This
13 exclusion is operative only as to employment by the county or
14 municipal corporation and does not deprive any person so
15 deputized from recourse against a private person employing him
16 or her for injury occurring in the course of and arising out of the
17 employment.
- 18 (d) Any person performing voluntary services at or for a
19 recreational camp, hut, or lodge operated by a nonprofit
20 organization, exempt from federal income tax under Section 101(6)
21 of the Internal Revenue Code, of which he or she or a member of
22 his or her family is a member and who receives no compensation
23 for those services other than meals, lodging, or transportation.
- 24 (e) Any person performing voluntary service as a ski patrolman
25 who receives no compensation for those services other than meals
26 or lodging or the use of ski tow or ski lift facilities.
- 27 (f) Any person employed by a ski lift operator to work at a snow
28 ski area who is relieved of and not performing any prescribed

1 duties, while participating in recreational activities on his or her
2 own initiative.

3 (g) Any person, other than a regular employee, participating in
4 sports or athletics who receives no compensation for the
5 participation other than the use of athletic equipment, uniforms,
6 transportation, travel, meals, lodgings, or other expenses incidental
7 thereto.

8 (h) Any person defined in subdivision (d) of Section 3351 who
9 was employed by the employer to be held liable for less than 52
10 hours during the 90 calendar days immediately preceding the date
11 of the injury for injuries, as defined in Section 5411, or during the
12 90 calendar days immediately preceding the date of the last
13 employment in an occupation exposing the employee to the hazards
14 of the disease or injury for injuries, as defined in Section 5412, or
15 who earned less than one hundred dollars (\$100) in wages from
16 the employer during the 90 calendar days immediately preceding
17 the date of the injury for injuries, as defined in Section 5411, or
18 during the 90 calendar days immediately preceding the date of the
19 last employment in an occupation exposing the employee to the
20 hazards of the disease or injury for injuries, as defined in Section
21 5412.

22 (i) Any person performing voluntary service for a public agency
23 or a private, nonprofit organization who receives no remuneration
24 for the services other than meals, transportation, lodging, or
25 reimbursement for incidental expenses.

26 (j) Any person, other than a regular employee, performing
27 officiating services relating to amateur sporting events sponsored
28 by any public agency or private, nonprofit organization, who
29 receives no remuneration for these services other than a stipend
30 for each day of service no greater than the amount established by
31 the Department of Personnel Administration as a per diem expense
32 for employees or officers of the state. The stipend shall be
33 presumed to cover incidental expenses involved in officiating,
34 including, but not limited to, meals, transportation, lodging, rule
35 books and courses, uniforms, and appropriate equipment.

36 (k) Any student participating as an athlete in amateur sporting
37 events sponsored by any public agency, public or private nonprofit
38 college, university, or school, who receives no remuneration for
39 the participation other than the use of athletic equipment, uniforms,

1 transportation, travel, meals, lodgings, scholarships, grants-in-aid,
2 or other expenses incidental thereto.

3 (l) Any law enforcement officer who is regularly employed by
4 a local or state law enforcement agency in an adjoining state and
5 who is deputized to work under the supervision of a California
6 peace officer pursuant to paragraph (4) of subdivision (a) of Section
7 832.6 of the Penal Code.

8 (m) Any law enforcement officer who is regularly employed
9 by the Oregon State Police, the Nevada Department of Motor
10 Vehicles and Public Safety, or the Arizona Department of Public
11 Safety and who is acting as a peace officer in this state pursuant
12 to subdivision (a) of Section 830.32 of the Penal Code.

13 (n) Any person, other than a regular employee, performing
14 services as a sports official for an entity sponsoring an
15 intercollegiate or interscholastic sports event, or any person
16 performing services as a sports official for a public agency, public
17 entity, or a private nonprofit organization, which public agency,
18 public entity, or private nonprofit organization sponsors an amateur
19 sports event. For purposes of this subdivision, “sports official”
20 includes an umpire, referee, judge, scorekeeper, timekeeper, or
21 other person who is a neutral participant in a sports event.

22 (o) Any person who is an owner-builder, as defined in
23 subdivision (a) of Section 50692 of the Health and Safety Code,
24 who is participating in a mutual self-help housing program, as
25 defined in Section 50087 of the Health and Safety Code, sponsored
26 by a nonprofit corporation.

27 (p) (1) Any person employed by his or her parent, child, spouse,
28 or registered domestic partner, or by the spouse or registered
29 domestic partner of his or her parent or child, in a farming
30 operation that is registered with the director or the director’s
31 designee and meets all of the following conditions:

32 (A) (i) The farming operation shall be wholly owned by one
33 or more of the family members described in this subdivision.

34 (ii) The farming operation shall be conducted on land that is
35 owned by, or leased to, the person or persons who own the farming
36 operation.

37 (B) The owner’s taxable income on the state income tax return
38 that he or she filed with the state during the 12-month period
39 preceding registration shall not exceed ten thousand dollars
40 (\$10,000). If there are multiple owners of the farming operation,

1 a single ten-thousand-dollar (\$10,000) limit shall apply to the
2 combined taxable income of all the owners.

3 (C) The owner or owners of the farming operation shall be in
4 compliance with all other applicable provisions of the Labor Code.
5 Any violation of the Labor Code by the owner or owners of the
6 farming operation shall prompt the director or the director's
7 designee to cancel the farming operation's registration and the
8 exclusion under this subdivision shall no longer apply.

9 ~~(D) The owner or owners of the farming operation shall provide~~
10 ~~health insurance for family members described in this subdivision~~
11 ~~who are working on the farm.~~

12 *(D) The person or persons that the owner or owners of the*
13 *farming operation seek to exclude from being an employee*
14 *pursuant to this subdivision shall be covered by health insurance.*

15 (E) While the farming operation is registered pursuant to this
16 subdivision, the farming operation and its owners shall not do any
17 of the following:

18 (i) Employ the services of any person who is otherwise an
19 employee for purposes of this chapter.

20 (ii) Employ or utilize, directly or indirectly, any labor by
21 independent contractors or farm labor contractors.

22 (iii) Furnish services to any person as an employee, independent
23 contractor, or farm labor contractor or employee thereof.

24 (2) Registration with the director or the director's designee
25 pursuant to this subdivision shall remain in effect for a period of
26 one year, unless the director or the director's designee cancels the
27 registration pursuant to subparagraph (C) of paragraph (1) or
28 subparagraph (B) of paragraph (3).

29 (3) (A) If any of the conditions listed in paragraph (1) are
30 violated while the farming operation's registration is in effect, the
31 employer shall be deemed to have failed to secure the payment of
32 compensation as required by Section 3700, and Sections 3700.5,
33 3710.1, and 3722 shall apply.

34 (B) If any of the conditions listed in paragraph (1) are violated
35 while the farming operation's registration is in effect, the director
36 or the director's designee shall have good cause to cancel the
37 operation's registration.

38 (4) Registration requires the farming operation to provide all
39 of the following to the director or the director's designee:

1 ~~(A) Proof that it provides health insurance for family members~~
2 ~~working on the farm.~~

3 (A) *Proof that any persons that the owner or owners of the*
4 *farming operation seek to exclude from being an employee*
5 *pursuant to this subdivision are covered by health insurance.*

6 (B) Proof of the amount of the owner or owners taxable income
7 during the 12-month period preceding registration.

8 (C) The names and ages of the persons employed by the farming
9 operation.

10 (D) A signed affidavit that no occupational injuries or illnesses
11 have occurred on the farm during the 12-month period preceding
12 registration.

13 (E) (i) Proof that the owner or owners of the farming operation
14 cannot afford the workers' compensation policy premium that
15 would apply to the operation in the year for which exclusion
16 pursuant to this subdivision is sought.

17 (ii) A verified quote from a licensed insurer for the workers'
18 compensation policy that the owner or owners of the farming
19 operation cannot afford.

20 (5) The information required by paragraph (4) shall become
21 public record, with the following exceptions:

22 (A) Copies of tax returns shall not be public record and shall
23 not be discoverable in any civil action.

24 (B) The space where any social security numbers are required
25 to be disclosed on the registration form shall be redacted from
26 public disclosure.